

No. 11433

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ALBERT DEL GUERCIO, District Director Immigration and Naturalization Service, Department of Justice, District No. 16,

Appellant,

vs.

SEBASTIAN GABOT,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

NOV 1-1936

PAUL P. D'ERIEU,
CLERK

No. 11433

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ALBERT DEL GUERCIO, District Director Immigration and Naturalization Service, Department of Justice, District No. 16,

Appellant,

vs.

SEBASTIAN GABOT,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	Page
Answer to Return (Traverse).....	37
Exhibit I. Certificate of Admission of Alien.....	39
Appeal:	
Notice of	47
Order Extending Time to Docket.....	48
Statement of Points on and Designation of Parts of Record for Consideration on (Circuit Court).	85
Certificate of Clerk.....	49
Findings of Fact and Conclusions of Law.....	42
Minute Order Entered June 21, 1946.....	41
Minute Order Entered July 2, 1946.....	42
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	47
Order Discharging Petitioner From Custody.....	46
Order Extending Time to Docket Appeal.....	48
Order for Writ of Habeas Corpus.....	9
Petition for Writ of Habeas Corpus.....	2
Points and Authorities.....	6
Reporter's Transcript of Proceedings.....	50
Testimony on Behalf of Petitioner:	
Gabot, Sebastian—	
Direct examination	71

	Page
Return to Writ of Habeas Corpus.....	11
Points and Authorities.....	13
Exhibit A. Certified Copy of Warrant Directing Deportation of Petitioner.....	20
Exhibit B. Certified Copy of Hearing Accorded Petitioner on September 12, 1935.....	22
Warrant for Arrest of Alien.....	25
Report of Investigation of Status of Sebastian Gabot Conducted by M. Bertrand Couch at San Quentin, California, on April 23, 1935.....	27
Commitment to State Prison.....	33
Statement of Points on Appeal and Designation of Parts of Record for Consideration on Appeal (Cir- cuit Court)	85
Traverse to Return to Writ of Habeas Corpus.....	37
Writ of Habeas Corpus.....	10

NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

JAMES M. CARTER

United States Attorney

RONALD WALKER

ROBERT E. WRIGHT

Assistants U. S. Attorney,

600 U. S. Post Office and Court House Building

Los Angeles 12, Calif.

For Appellee:

L. A. GORDON

HARRY WOLPIN

1026 Black Building

357 South Hill Street

Los Angeles 13, Calif. [1*]

In the United States District Court
Southern District of California
Central Division
No. 5458-PH

In the Matter of
SEBASTIAN GABOT,
Petitioner.

PETITION FOR WRIT OF HABEAS CORPUS

Comes now the Petitioner Sebastian Gabot and files this his Petition for Writ of Habeas Corpus and respectfully alleges as follows:

I.

That your petitioner was born on the 8th day of April, 1909 at Binalonan, P. I., and was admitted to the United States for permanent residence on September 30th, 1927 at Honolulu, T. H., arriving in continental United States on or about the 29th day of July, 1929. That petitioner has resided in the United States continuously since said entry, a matter of about seventeen years. His family consists of one brother residing in Salinas, California; that he has no relatives of any degree so far as he has been able to determine in the Philippine Islands.

II.

Petitioner was convicted of second degree murder in the Superior Court of the State of California at San Luis Obispo on or about March 20th, 1934. While serving time at San Quentin Penitentiary at Marin, Cal., on or about March 20th, 1935, petitioner was interviewed by an [2] Officer of the U. S. Immigration Service. Peti-

tioner was twenty-six years old at that time and had an additional six and one-half years to serve. The said Officer stated to the petitioner that he would be deported from the United States anyway, and if he would sign a consent to deportation that the Inspector would get him out of prison and send him to the Philippine Islands within a year. Petitioner stated that, if released he was then young enough to rehabilitate himself and make something out of life. The Inspector then wrote a consent agreement and asked the petitioner to sign the same. The petitioner did as he was requested but he was not released from imprisonment as promised.

III.

Your petitioner has cancelled, rescinded and withdrawn his consent to deportation given as aforestated and hereby again does cancel, withdraws and rescinds said consent to such deportation.

IV.

That the hearing on the Deportation Warrant was conducted while petitioner was in prison. He was not represented by counsel. He consented to the deportation under the circumstances as aforestated, and hearing was most perfunctory in form and limited in scope. Petitioner was not advised that there was a provision in the law, under terms of which he could apply for relief, even though having been convicted as aforestated. He was not advised that without his consent he could not be deported until he had served his term of imprisonment. He was not

advised that he was entitled to witnesses on his own behalf, and a perusal of the record indicates that no attempt was made to locate or contact such witnesses. In view of such facts, petitioner believes and here alleges that he was not given a full, fair and complete hearing.

V.

From on or about the 20th day of March, 1935, Petitioner was never advised that the Bureau of Immigration had a warrant of [3] deportation, nor was he advised by the Bureau of Immigration that a warrant of deportation was outstanding against him, until on or about the 16th day of April, 1946, he received a notice from the District Director of Immigration and Naturalization at Los Angeles, California, to report at that office on April 16th, 1946, for the purpose of being deported to the Philippine Islands. Petitioner on the 24th day of May, 1946, engaged present counsel and a motion to Reopen said hearing on the said Deportation Warrant was filed on the 31st day of May, 1946 with the Board of Immigration Appeals, United States Department of Justice, Washington, D. C., and said motion is now pending before said Board of Appeals, and neither Petitioner nor his Counsel have been advised of the action taken therein.

VI.

Petitioner alleges that Deportation without his consent and against his wishes is illegal under the present laws of the United States governing such matters. The record of hearing in this case was reviewed in the office

of the District Director of Immigration & Naturalization at Los Angeles, California by Petitioner's Counsel, and the facts herein stated are obtained from perusal of said records.

VII.

That Petitioner has surrendered himself in accordance with the Notice hereinbefore referred to and is now held in custody of the District Director of Immigration and Naturalization at Los Angeles, California.

VIII.

That he is not held by virtue of any complaint, indictment, presentment, warrant, rule, regulation or order, except as above set out; that no other application for a Writ of Habeas Corpus has been made for or in behalf of Petitioner.

Wherefore, petitioner respectfully prays that a Writ of Habeas [4] Corpus be issued that a return date on the same be set; that Petitioner be restored to his liberty; that the hearing on the outstanding warrant of deportation be ordered reopened so that the records pertaining to petitioner may be completed to show the full, true and complete facts in connection with all the matters at issue.

L. A. GORDON and HARRY WOLPIN

By Harry Wolpin

Attorneys for Petitioner [5]

[Title of District Court and Cause.]

POINTS AND AUTHORITIES

The right of an alien to maintain a suit in equity to cancel an order of deportation and a bail bond given in the deportation proceeding has been denied on the ground that such alien has an adequate and complete remedy by habeas corpus.

Fafalios v. Doak, (App. Dec.) 50 F. (2d) 640.

It is not the function of the courts to examine particular steps and rulings in a deportation proceeding, but only to determine whether or not the proceedings as a whole meet the requirements of due process of law.

Berkman v. Tillinghast, (C. C. A. Mass.) 58 F. (2d) 621.

A hearing may be rendered unfair by the fact that the immigration official who conducted the hearing has prejudged the case and intends to make or recommend an order of deportation.

Strench v. Pedaris, (C. C. A. Wyo.) 55 F. (2d) 597.

The Court has authority to modify a warrant of deportation so as to permit the alien to voluntarily depart from the United States.

U. S. ex rel. Karamian v. Curran, (C. C. A. N. Y.) 16 F. (2d) 958. [7]

A deportation order requiring the proper official to return an alien to the country whence he came, and for that purpose to furnish transportation for him, means

that the transportation is to be obtained and the deportation effected within a reasonable time. . .

U. S. v. Wallis (C. C. A. N. Y.) 279 F. 401.

An alien arrested for deportation to Russia was entitled to be deported or have his freedom, and he could not be required to furnish a bond and report at intervals to the immigration commissioner until he could be deported to Russia, notwithstanding deportation to Russia was not possible because of lack of recognition of the Soviet Government by the United States.

Petition of Brooks, (D. C. Mass.) 5 F. (2d) 258.

The detention, prior to a hearing, of an alien whom it sought to deport and acts of government officials with respect to such detention are a part of the proceedings for deportation and the fairness required in the proceedings generally must attend such detention and acts.

Ex parte Eguchi, (D. C. Cal.) 58 F. (2d) 417.

A warrant of deportation should be executed within a reasonable time.

U. S. ex rel. Lisafeld v. Smith (D. C. N. Y.) 2 F. (2d) 90.

The proceedings for deportation, although summary, must afford the alien a fair opportunity to establish his right to remain in the United States.

U. S. v. Martin, (D. C. N. Y.) 193 F. 795.

It is the duty of a Court to consider the competency and legal admissibility of the evidence presented in determining whether a fair hearing was given in a deportation proceedings.

Ex parte Morel, (D. C. ~~Mass~~ Wash.) 292 F. 423.

The Court may determine whether or not the alien has had a fair hearing.

U. S. ex rel. Ohm v. Perkins, (C. C. A. N. Y.)
79 F. (2d) 533.

Where evidence was improperly received and where but for that evidence it is wholly doubtful whether the requisite finding would have been made, there the order of deportation is without a fair hearing which may be corrected on habeas corpus. See *Vajtauer v. Commissioner*, 273 U. S. 103, 106.

Bridges v. Wixon, etc., 326 U. S. 135. [8]

U. S. v. Uhl, (C. C. A. N. Y.) 271 F. 676.

Sec. 19 of the Immigration Act of Feb. 5, 1917, as amended, provides in part:

“Provided further, That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having been first given to representatives of the State, make a recommendation to the Attorney General that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment.”

A mere parole is not a termination of imprisonment within the immigration act of Feb. 5, 1917, section 19.

Nagle v. Lim Foon, 48 F. (2d) 51.

Filing of motion for a new trial stays execution of judgment.

Code of Civil Procedure of California—Sec. 681a.

Respectfully submitted,

L. A. GORDON & HARRY WOLPIN

By Harry Wolpin

Attorneys for Petitioner

[Endorsed]: Filed Jun. 11, 1946. [9]

[Title of District Court and Cause.]

ORDER FOR WRIT OF HABEAS CORPUS

Let the Writ of Habeas Corpus issue in the above captioned matter, returnable before the Hon. Peirson M. Hall, Judge of the United States District Court at Los Angeles, California on the 17th day of June, 1946 at 10 o'clock A. M. of said day.

The Clerk is hereby directed to issue said Writ.

Dated: June 11, 1946.

PEIRSON M. HALL

Judge of the United States District Court

[Endorsed]: Issd writ. Filed Jun. 11, 1946. [10]

United States District Court
Central Division, Southern District of California

HABEAS CORPUS

The President of the United States of America
To District Director of Immigration and Naturalization
Service—Greeting:

You Are Hereby Commanded, that the body of Sebastian Gabot by you restrained of his liberty, as it is said detained by whatsoever names the said Sebastian Gabot may be detained, together with the day and cause of being taken and detained, you have before the Honorable Peirson M. Hall, Judge of the United States District Court in and for the Southern District of California, at the court room of said Court, in the City of Los Angeles at 10:00 o'clock a. m., on the 17 day of June, 1946, then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then and there this writ.

Witness the Honorable Peirson M. Hall, United States District Judge at Los Angeles, California, this 11 day of June, A. D. 1946.

(Seal)

EDMUND L. SMITH

Clerk

By E. M. Enstrom, Jr.

Deputy Clerk [11]

Received the within writ the 11th day of June, 1946.
Albert Del Guercio, District Director, by Bruce G. Barber.
Charles H. Carr, U. S. Atty., Ronald Walker, Asst. U. S.
Atty.

[Endorsed]: Filed Jun. 11, 1946. [12]

In the District Court of the United States in and for the
Southern District of California

Central Division

No. 5458-PH

In the Matter of

SEBASTIAN GABOT

for Writ of Habeas Corpus

RETURN TO WRIT OF HABEAS CORPUS

I, Albert Del Guercio, District Director, Immigration and Naturalization Service, Department of Justice, Los Angeles, California, District No. 16, respondent herein, for my return to writ of habeas corpus issued in the above case, state:

I.

That Sebastian Gabot, hereinafter referred to as the petitioner, is not being illegally restrained by me of his liberty but is in my custody under proper and lawful authority.

II.

On April 16, 1946 the petitioner was surrendered into my custody for deportation by virtue of an outstanding warrant of deportation issued on November 8, 1935 under the authority then vested in the Secretary of Labor. On the date of issuance of the writ of habeas corpus herein, respondent was in the act of arranging to convey the petitioner to San Francisco where he was to have been de-

ported on a vessel sailing from that port on June [13] 12, 1946 destined to the Philippine *Island*.

III.

On the date of issuance of the warrant of deportation on November 8, 1935, the petitioner was then serving a prison sentence and was not released from imprisonment until May 22, 1942. The warrant of deportation provides that execution thereof be deferred until such time as petitioner was released from imprisonment. Upon the release of petitioner from imprisonment on May 22, 1942 it was not possible at that time or thereafter to effect the deportation of the petitioner due to conditions resulting from the war. Shipping has been resumed and respondent is now prepared to effect the deportation of the petitioner to the Philippine Islands in pursuance of the warrant of deportation.

IV.

For further return of respondent there is attached hereto as a part of this return and marked Exhibit "A" certified copy of warrant directing the deportation of the petitioner to the Philippine Islands.

V.

For further return of respondent there is attached hereto as a part of this return and marked Exhibit "B" certified copy of hearing accorded the petitioner on September 12, 1935 to determine his right to be and remain in the United States.

Wherefore, I Albert Del Guercio, District Director, Immigration and Naturalization Service, Department of Justice, pray that the writ of habeas corpus be dismissed and that said petitioner, Sebastian Gabot, be remanded to my custody.

ALBERT DEL GUERCIO

District Director Immigration and Naturalization Service
Department of Justice, District No. 16 [14]

[Verified.] [15]

[Title of District Court and Cause.]

POINTS AND AUTHORITIES

I.

The Courts have held that if the hearing was fair, if there was evidence to support the findings, and if no error of law was committed, the decision of the Attorney General must stand and cannot be corrected in judicial proceedings and the alien does not have a right to a hearing *de novo*.

Keesler v. Strecker, 59 S. Ct. 694, 700, 307 U. S. 22, 34.

Lee Check Hon v. Proctor, (CCA-9) 112 F. 2d 246, 247.

II.

Provision is made by act of Congress for the deportation of “* * * any alien who is * * * sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral

turpitude, committed within five years after the entry of the alien to the United States * * *."

8 U. S. C. 155. [16]

III.

Regulations of the Attorney General now make provision for the time of execution of a warrant of deportation where the alien is confined in or paroled from a penal institution. (Note: Transfer of the Immigration and Naturalization Service from the Department of Labor to the Department of Justice was effected on June 14, 1940. (5 U. S. C. Sec. 133t).)

8 Code of Federal Regulations Sec. 150.12

"Sec. 150.12(b) * * * No alien sentenced to imprisonment shall be deported under any provision of law until the termination of the imprisonment. Imprisonment shall be considered as terminated upon the release of an alien from confinement whether or not he is subject to rearrest or further confinement in respect to the same offense. Release of an alien from confinement on parole shall be considered as termination of imprisonment."

Lu Woy Hung v. Haff, 9th Cir., 78 F. 2d 836, 838.

IV.

The holding of a deportation hearing in a prison does not constitute an unfair hearing:

Rousseau v. Weedin, 9th Cir., 284 F. 565 at page 566 the court states:

“The appellant contends that he was deprived of a fair hearing, in that he was confined in the state penitentiary at the time thereof. We can find in that fact no implication that the hearing was unfair. It is true that the appellant was not represented by an attorney, but he was advised of his right to counsel, and repeatedly was asked if he desired an attorney, and always answered in the negative.”

U. S. ex rel. Wlodinger v. Reimer, 2d Cir., 103 F. 2d 435, the court states at page 436:

“On the issue of fair hearing the appellant complains that he was examined by the immigrant inspectors while in prison and without counsel, * * *. The fact *the* the hearing was held in prison did not render it unfair. The appellant was given the chance to have counsel present.”

V.

Deportation is not punishment for a crime, neither is the proceeding [17] a criminal prosecution within the meaning of the 5th and 6th Amendments to the Constitution:

Zakonaite v. Wolf, 33 S. Ct. 31, 226 U. S. 272, 57 L. Ed. 218.

The Supreme Court herein stated: “It is entirely settled that the authority of Congress to prohibit aliens from coming within the United States, and to regulate their coming, includes authority to impose conditions upon the performance of which the continued liberty of the

alien to reside within the bounds of this country may be made to depend; that a proceeding to enforce such regulations is not a criminal prosecution within the meaning of the 5th and 6th Amendments; that such an inquiry may be properly devolved upon an executive department or subordinate officials thereof, and that the findings of fact reached by such officials, after a fair though summary hearing, may constitutionally be made conclusive, as they are made by the provisions of the act in question."

Bridges v. Wixon, 65 S. Ct. 1443, 1449, 326 U. S. 148, 147, 89 L. Ed. 2103.

Mr. Justice Douglas delivering the opinion of the Court reiterated that:

"* * * Deportation technically is not a punishment * * *."

IV.

It is well settled that deportation proceedings are summary in their nature and all that is required under the law is that the alien be given a fair hearing.

Japanese Immigrant Case, 23 S. Ct. 611, 189 U. S. 86, 47 L. Ed. 721.

Chin Yow v. U. S., 28 S. Ct. 201, 208 U. S. 8, 52 L. Ed. 369.

Gung You v. Nagle, 9th Cir., 34 F. 2d 848.

VII.

A warrant of deportation does not become functus officio and void because of delay in its execution where the delay is due to war conditions or where execution of the warrant is delayed or prevented by acts of the alien.

Seif v. Nagle, 9th Cir., 14 F. 2d 416, at page 417 the Court states:

"It is urged that the Secretary of Labor and Commissioner of Immigration have waived the right to deport in that they have waited an unreasonable time after the Department of Labor assumed jurisdiction of the detained. [18] We find no merit in the point. When the original order of 1914 was made, directing deportation to Austria, because of the war the alien could not have been deported to that country. Since the war, even as late as 1924, the alien himself has exerted efforts to prevent deportation and has been successful in obtaining several stays. But in August, 1925, the Government of Poland issued the necessary passport. No sufficient reason appears for issuing judicial process that will prevent carrying out the order *of* deportation."

See also:

Marty v. Nagle, 9th Cir., 44 F. 2d 695, cert. den.
51 S. Ct. 349, 283 U. S. 868, 75 L. Ed. 1471.

Caranica v. Nagle, 9th Cir., 28 F. 2d 955.

Restivo v. Clark, 1st Cir., 90 F. 2d 847.

U. S. v. Wallis, 2d Cir., 279 F. 401.

U. S. ex rel. Vassiliades v. Commissioner of Immigration, etc., 2d Cir., 103 F. 2d 423.

VIII.

The fact that the return of an alien to his native country may result in hardship does not change the civil nature of the deportation proceeding. There are many examples of proceedings which involve hardship, which are by law left to determination in a civil proceeding, such

as questions of paternity, legitimacy, rights of inheritance and the existence or non-existence of the *marital* status. The fact that hardship is involved in the deportation of an alien gives him no right to an asylum in this country.

Ex parte Kurth, et al., 28 F. Supp. 258.

IX.

Discretionary authority to suspend deportation or grant voluntary departure in lieu of deportation has expressly been denied the Attorney General by Congress where deportation is based upon conviction of a crime involving moral turpitude,

8 U. S. C. 155(d) "The provisions of subsection (C) shall not be applicable in the case of any alien who is deportable under * * * any of the provisions of so much of subsection (a) of this section as relates to criminals * * *." [19]

Respectfully submitted,

CHARLES H. CARR

United States Attorney

By Ronald Walker

Assistant United States Attorney

BRUCE G. BARBER

District Adjudications Officer Immigration and Naturalization Service, on the points and authorities. [20]

UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION
SERVICE

June 13, 1946

Pursuant to Title 28, Section 661, U. S. Code (Sec. 882, Revised Statutes), I hereby certify that the annexed paper is a true copy of the original appearing in the record of the Immigration and Naturalization Service, Department of Justice, relating to Sebastian Gabot, file No. 12020/25089.

In Witness Whereof, I have hereunto set my hand and caused the seal of the Department of Justice, Immigration and Naturalization Service, to be affixed, on the day and year first written above.

(Seal)

Albert Del Guercio

ALBERT DEL GUERCIO

District Director Los Angeles District No. 16 [21]

[EXHIBIT "A"]

WARRANT—DEPORTATION OF ALIEN

12020-25089

UNITED STATES OF AMERICA

Department of Labor

Washington

No. 55898-979

To: District Director of Immigration and Naturaliza-
San Francisco, Calif.
tion, Angel Island Station, /

Or to any Officer or Employee of the United States Im-
migration and Naturalization Service.

Whereas, from proofs submitted to me, Assistant to the
Secretary, after due hearing before an authorized im-
migration inspector, I have become satisfied that the alien

SEBASTIAN GABOT alias JACK DENNY,

who entered the United States at San Ysidro, Calif., on
— — — the 20th day of March, 1934, is subject to depor-
tation under section 19 of the Immigration Act of Feb-
ruary 5, 1917, being subject thereto under the following
provisions of the laws of the United States, to wit: The
act of 1917, in that he has been sentenced, subsequent to
May 1, 1917, to imprisonment for a term one year or
more because of conviction in this country of a crime
involving moral turpitude committed within five years
after entry to wit: Murder 2nd degree,

I, Turner W. Battle, Assistant to the Secretary of
Labor, by virtue of the power and authority vested in me
by the laws of the United States, do hereby commend you
to deport the said alien to — Philippine Islands, —, at the

expense of the appropriation, "Salaries and Expenses, Immigration and Naturalization Service, 1936," including the expenses of an attendant, if necessary. Execution of this warrant should be deferred until such time as the alien is released from imprisonment.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 8th day of November, 1935.

mlh

Assistant to the Secretary of Labor [22]

UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION
SERVICE

June 13, 1946

Pursuant to Title 28, Section 661, U. S. Code (Sec. 882, Revised Statutes), I hereby certify that the annexed paper is a true copy of the original appearing in the record of the Immigration and Naturalization Service, Department of Justice, relating to Sebastian Gabot, file No. 12020/25089.

In Witness Whereof, I have hereunto set my hand and caused the seal of the Department of Justice, Immigration and Naturalization Service, to be affixed, on the day and year first written above.

(Seal)

Albert Del Guercio

ALBERT DEL GUERCIO

District Director Los Angeles District No. 16 [23]

[EXHIBIT "B"]

U. S. DEPARTMENT OF LABOR
Immigration and Naturalization Service

Central Office File: 55898/979

Case of: Sebastian Gabot

San Quentin No. 57211

San Quentin Name: Jack Denny

San Francisco File: 12020/25089

Hearing of Sebastian Gabot
conducted by M. Bertrand Couch

Date: September 12, 1935.

Place: U. S. Immigration Office, San Quentin Prison,
California.Present: U. S. Immigrant Inspector M. Bertrand Couch
as Examining Inspector and Stenographer. For the
alien, himself, Sebastian Gabot alias Jack Denny.

Examining Officer to the Alien:

Q. What is your correct and complete name?

A. Sebastian Gabot.

Q. Have you ever used any other name?

A. Jack Denny.

Q. I now show you and serve upon you U. S. Department of Labor Warrant of Arrest No. 55898/979 issued in your name by the Secretary of Labor in Washington, D. C., on August 2, 1935. Do you clearly understand the terms of this warrant?

A. I do.

Q. Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

A. I do.

Q. You are informed that the purpose of this hearing is to afford you an opportunity to show cause why you should not be deported from the United States. You are advised that under these proceedings you have the right to be represented by counsel of your own selection, which counsel may be an attorney at law or any person of good character and reputation. Do you wish to be so represented?

A. I will not have anyone to represent me here. [24]

Q. Are you the same Sebastian Gabot alias Jack Denny who made a statement here on April 23, 1935, concerning your presence in this country and who is mentioned in this Form 505 covering your admission to this country on September 30, 1927, at Honolulu, T. H. U. S. A. and who is mentioned in this copy of *of* commitment covering your residence in this prison?

A. Yes.

Q. You are informed that all of these documents are herewith made parts of this record of hearing, being the evidence on which this warrant of arrest was issued. Do you understand that?

A. Yes.

Q. Have you any reasons to state for this record of hearing as to why you should not be deported in conformity with the immigration laws of this country?

A. No.

Q. Warning:—

You are hereby warned that, under the Act of March 4, 1929, as amended, you will, if ordered deported and thereafter enter or attempt to enter the United States, be guilty of a felony and, upon conviction, be liable to imprisonment of not more than two years, or a fine of not

more than \$1000, or both such fine and imprisonment, unless following your departure from the United States in pursuance of an order of deportation, you receive permission from the Secretary of Labor to apply for admission after one year from the date of your departure. Do you understand this warning?

A. Yes, sir, I understand.

Q. Have you anything else that you wish to say in your own behalf before this hearing is closed?

A. I want to be sent back to my home in the Philippine Islands as quickly as they will let me be deported. I am all ready to go. I have nothing to get outside of this prison in the way of property or personal effects. That is all.

Hearing closed. [25]

U. S. DEPARTMENT OF LABOR IMMIGRATION SERVICE

Summary: Sebastian Gabot, age 23, male, married, houseboy, native and citizen of Philippines, Filipino race, last entered the United States apparently as returning resident at San Ysidro, California, March 20, 1934.

Recommendation: The charge contained in the warrant of arrest has been sustained by the evidence adduced in the hearing granted this alien and I respectfully recommend that he be returned to the country of his origin and citizenship, Philippine Islands.

(Signed) M. Bertrand Couch
Immigrant Inspector.

I certify that the foregoing is a true and correct transcript of the record of hearing in this case.

(Signed) M. Bertrand Couch

MBC

Stenographer [26]

Form W-11

U. S. Department of Labor

Immigration and Naturalization Service

WARRANT

For Arrest of Alien

UNITED STATES OF AMERICA

Department of Labor

Washington

12020/25089

No. 55898/979

To District Director of Immigration and Naturalization,
San Francisco, Calif.,

Or to any Immigrant Inspector in the service of the
United States.

Whereas, from evidence submitted to me, it appears that
the alien

SEBASTIAN GABOT alias JACK DENNY,

who entered this country at San Ysidro, Calif., on ---
the 20th day of Mar., 1934, has been found in the United
States in violation of the immigration laws thereof, and

more than \$1000, or both such fine and imprisonment, unless following your departure from the United States in pursuance of an order of deportation, you receive permission from the Secretary of Labor to apply for admission after one year from the date of your departure. Do you understand this warning?

A. Yes, sir, I understand.

Q. Have you anything else that you wish to say in your own behalf before this hearing is closed?

A. I want to be sent back to my home in the Philippine Islands as quickly as they will let me be deported. I am all ready to go. I have nothing to get outside of this prison in the way of property or personal effects. That is all.

Hearing closed. [25]

U. S. DEPARTMENT OF LABOR IMMIGRATION SERVICE

Summary: Sebastian Gabot, age 23, male, married, houseboy, native and citizen of Philippines, Filipino race, last entered the United States apparently as returning resident at San Ysidro, California, March 20, 1934.

Recommendation: The charge contained in the warrant of arrest has been sustained by the evidence adduced in the hearing granted this alien and I respectfully recommend that he be returned to the country of his origin and citizenship, Philippine Islands.

(Signed) M. Bertrand Couch
Immigrant Inspector.

I certify that the foregoing is a true and correct transcript of the record of hearing in this case.

(Signed) M. Bertrand Couch

MBC

Stenographer [26]

Form W-11

U. S. Department of Labor

Immigration and Naturalization Service

WARRANT

For Arrest of Alien

UNITED STATES OF AMERICA

Department of Labor

Washington

12020/25089

No. 55898/979

To District Director of Immigration and Naturalization,
San Francisco, Calif.,

Or to any Immigrant Inspector in the service of the
United States.

Whereas, from evidence submitted to me, it appears that
the alien

SEBASTIAN GABOT alias JACK DENNY,

who entered this country at San Ysidro, Calif., on ---
the 20th day of Mar., 1934, has been found in the United
States in violation of the immigration laws thereof, and

is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: The immigration act of February 5, 1917, in that he has been sentenced, subsequent to May 1, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry, to wit: Murder 2nd degree.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1936." Pending further proceedings, the alien should be permitted to remain in his present location without expense to the Immigration and Naturalization Service. However, if released to the custody of this Service at any time before deportation is effected or before other final disposition is made of his case, he may be released under bond in the sum of \$1000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 2nd day of Aug., 1935.

TURNER W. BATTLE,

CS

Assistant to the Secretary of Labor [27]

Prison No. 57211	California State Prison,
S. F. File No.	San Quentin, California,
	(Date) April 23, 1935.

Report of investigation of status of Sebastian Gabot alias Jack Denny conducted by M. Bertrand Couch at San Quentin, California, on April 23, 1935,

Testimony recorded by M. Bertrand Couch

Examination conducted in the English language
acting as interpreter

Examining Inspector to Sebastian Gabot

Q. You are advised that I am an United States Immigrant Inspector and authorized by law to administer oaths in connection with the enforcement of the immigration law. I desire to take a statement regarding your right to be and remain in the United States. Any statement which you make should be voluntary and you are hereby warned that such a statement may be used against you either in criminal or deportation proceedings. Are you willing to make this statement or answer questions under these conditions?

A. Yes.

Q. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

A. I do.

Q. What is your name, sex, age, conjugal status and occupation (if married, give maiden name and birthplace of wife: also names, ages, and places of birth of children and their present addresses).

A. My name is Sebastian Gabot. I am a male, I am 23 years old. I am a house boy. On March 20, 1934, in Tijuana, Mexico, I married Su San Quan, a Chinese girl

who used to work for me in my restaurant in Lompoc, Calif. I took her to Mexico to marry her. We were in Mexico about four hours that day. We came back in the regular way, we were not asked anything, the officers just wavee their hands to us to go on. We separated July 27, 1934, in Lompoc. I don't know her address now. We had no child from our marriage.

Q. Have you ever been known by any other name?

A. Jack Denny.

Q. When and where were you born; of what country are you a citizen or subject; and of what race are you?

A. I was born January 1, 1912, in Binalonan, Pangasinan, P. I. I am a citizen of the Philippine Islands. I am of the Filipino Race.

Q. State the name of your parents, their birthplaces, the countries of which they are citizens or subjects, and present address?

A. My father's name is Anacleto Gabot, and my mother is Marcela Dacuag, both were born in my birthplace and live there now. They are citizens of the Philippine Islands.

Q. Has either parent ever been a citizen or subject of any other country or taken steps to become a citizen or subject of any other country?

A. No.

Q. Has either parent ever resided in the United States?

A. No.

Q. When and where did you last enter the United States?

A. I re-entered March 20, 1934, San Ysidro, California. The officers just waved their hands at me and my

Chinese bride to go on and they asked us no questions at all. [28]

Q. For what purpose did you enter the United States?

A. I was returning to continue my residence here.

Q. Were you accompanied by anyone? If so, state names and addresses of accompanying persons.

A. My young Chinese bride, Su San Quan, was with me. We had been over to the Mexican side of the border to get married that day. She was born in China, in Shanghai, October 13, 1910.

Q. Were you going to join anyone? If so, state names and addresses in detail.

A. No but my stepbrother, Gregorio Sanpayan, lives in Lompoc, Calif. P. O. Box 746.

Q. At the time of your last entry were you duly inspected and admitted by an United States Immigrant inspector?

A. I passed right in front of the officers and they asked no questions, just waved to us to keep on going and we did. That was in the afternoon.

Q. Have you at any time prior to your last entry been inspected and admitted to the United States by Immigration officers?

A. Yes. I left Manila, P. I., on September 9, 1927, on the SS President Grant to Honolulu, Hawaii, where I stayed about two years. Then I came to Frisco on the SS President McKinley, July 11, 1929, as 3rd class passenger.

Q. Have you ever resided in the United States prior to the date of your last entry? If so, when and where?

A. From 1937 until now except for the trip to Mexico.

Q. Have you ever had in your possession an immigration visa issued to you in a foreign country by an American consul?

A. No. I did not need one.

Q. Have you ever been excluded or deported or allowed to take voluntary departure from the United States in lieu of deportation by Immigration authorities?

A. No.

Q. At the time of your last entry were you able to read in any language or dialect?

A. Ilocano dialect and some English also.

Q. What was your last foreign address and how long did you live there?

A. Tijuana, Mexico, for a few hours.

Q. Have you any property or financial resources in the United States, or any baggage or personal effects outside of this prison which you wish the Immigration Service to secure for you if you are deported?

A. My stepbrother, (above named) took all my property and personal effects.

Q. State the names and addresses of your nearest relatives living abroad?

A. My parents (see first page)

Q. Have you ever been supported by public charity or an inmate of any charitable institution at any time?

A. No. [29]

Q. On what charge are you confined in this prison?

A. Murder second degree.

Q. When and where was the crime committed?

A. October 11, 1934, in San Luis Obispo, California, I killed William A. B. Master. I believed he was going to kill me. I think I was protecting my life. I did not intend to kill him. I just wanted to save my own life.

Q. Did you plead guilty or not guilty?

A. Not guilty.

Q. What is the date of your sentence

A. January 28, 1935.

Q. What sentence did you receive?

A. 5 years to life.

Q. Have you ever committed any crime prior to this at any time or in any country?

A. No.

Q. Did you ever serve any other term of imprisonment? If so, state when, where, for what and length of sentence.

A. No.

Q. Did you ever use narcotics prior to your last entry?

A. No.

Q. Have you a passport?

A. No.

Q. Have you a birth certificate or baptismal certificate?

A. No.

Q. Have you any paper or document that will aid in establishing your status as a citizen or subject of Philippine Islands; if so, what is the nature of such paper or document?

A. No but my birth is recorded in Binalonan and my parents live there now. [30]

Q. Have you anything further that you wish to say in your own behalf before this statement is closed?

A. I have nothing more to say now.

Personal Description of Alien:

Height 5' 2" Weight 130 Eyes Brown Hair Black
Face Small-round Nose Short-flat at base Mouth
Regular Complexion Brown

Distinctive Marks:

Small scar between eyes, pit scar.

Sebastian Gabot
(Signature of Alien)

Signed in the presence of

(Signed) M. Bertrand Couch

United States Immigrant Inspector

CRIMINAL HISTORY:

Fingerprint returns show this man has been convicted of only one crime, the one he is now doing time for.

MBC [31]

State of California, County of Marin—ss.

I, the undersigned, Mark E. Noon, do hereby certify that I am the duly appointed, qualified and acting Secretary of the Board of Prison Terms and Paroles of the State of California, and that by virtue of my said office, I am the keeper and official custodian of all the official records and files of said Board.

I further certify that I have carefully compared each document and paper which is hereto attached with the original of which it purports to be a copy, and that the documents which are hereto attached are full, true and correct copies of said originals as the same appear of record in the official records and files of the said Board of Prison Terms and Paroles, which are in my custody and keeping as aforesaid.

I further certify that this attestation is in due form and by the proper officer.

In Witness Whereof, I have subscribed the foregoing and have caused the official seal of my office to be thereunto attached on this the 25th day of April, 1935.

Mark E. Noon

Secretary, Board of Prison Terms and Paroles,
San Quentin, California.

By.....

Assistant Secretary [32]

In the Superior Court of the County of San Luis Obispo
State of California

The People of the State of California,
Plaintiff,

vs.

Jack Denny,

Defendant.

COMMITMENT TO STATE PRISON

P. C. Secs. 1168, 1216

The People of the State of California,

To the Sheriff of the County of San Luis Obispo, and
the Warden and officers in charge of the State Prison of
the State of California, at San Quentin, Greeting:

The above named Jack Denny having been duly convicted in the Superior Court of the County of San Luis Obispo, of the crime of Murder of the Second Degree and judgment having been pronounced against him that he be punished by imprisonment in the State Prison of the State of California at San Quentin for the term pre-

scribed by law all of which appears to us of record, and a certified copy of the judgment being endorsed hereon and made a part hereof:

Now, This Is to Command You, the said Sheriff of the County of San Luis Obispo to take and keep and safely deliver the said Jack Denny into the custody of the said Warden or other officer in charge of the State Prison of the State of California at San Quentin, California at your earliest convenience.

And This Is to Command You, the said Warden and other officers in charge of the State Prison of the State of California at San Quentin, California to receive of and from the Sheriff of the County of San Luis Obispo the said Jack Denny convicted and sentenced as aforesaid, and him the said Jack Denny keep and imprison in the said State Prison of the State of California at San Quentin, California. And these presents shall be your authority for the same. Herein fail not.

Witness, Hon. T. A. Norton, Judge of the Superior Court of the County of San Luis Obispo, State of California, this 29th day of January, 1935.

Attest, my hand and seal of said Superior Court, the day and year last above written.

(Seal)

Gwen Marshall

Clerk

By - - - - -

Deputy Clerk [33]

San Quentin, California,

Date: Mar 27 1935

CRIMINAL HISTORY

As shown by the fingerprint returns from the California State Bureau of Identification and from the Bureau of Investigation, U. S. Department of Justice, Washington, D. C.

San Quentin Name: Denny, Jack.

San Quentin No: 57211.

S. F. File No:

Received at Prison: Jan. 29, 1935.

From: San Luis Obispo.

Court No: 1556.

Crime: Murder. 2nd.

Alias—Sebastian Gavot; Sebastian Gabot;

Country of Birth: Filipino.

Age: 23.

Race: Filipino.

Plea in Court: Pleaded not Guilty.

Occupation: Houseboy.

Date Sentenced: January 28, 1935.

Sentence: 5-life.

Date	Town	Number	Name	Charge	Disposition
10-11-34	S Luis Obispo	Cir 106	Sebastian Gabot	A.D.W.	Wanted

Department of Justice

11-1-34	PD L.A.	31234-M-12	Jack Denny	A.D.W. sus	Not given
11-2-34	SO S. Luis Obispo	A-3173	Jack Denny	Murder	" "

10-11-34, San Luis Obispo, Wanted, *assult* with deadly weapon, Notified 12-22-34.

J.G.G. [34]

In the District Court of the United States in and for the
Southern District of California
Central Division
No. 5458 P.H.

In the Matter of
SEBASTIAN GABOT
for Writ of Habeas Corpus

AFFIDAVIT OF SERVICE BY MAIL

United States of America
Southern District of California—ss.

Ann B. Storler, being first duly sworn, deposes and says:

That (s)he is a citizen of the United States and a resident of Los Angeles County, California; that (~~his~~) (her) business address is 600 Post Office and Court House, Los Angeles, California; that (s)he is over the age of eighteen years, and is not a party to the above-entitled action;

That on June 14, 1946 (s)he deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Return to Writ of Habeas Corpus addressed to Harry Wolpin and L. A. Gordon, 1026 Black Building, 357 South Hill Street, Los Angeles 13, California, his last known address, at which place there is a delivery service by United States Mails from said post office.

Ann B. Storler

Subscribed and Sworn to before me, this 14 day of June, 1946.

(Seal)

Clerk, U. S. District Court, Southern
District of California,

By E. M. Enstrom, Jr.,

Deputy.

[Endorsed]: Filed Jun. 14, 1946. [35]

[Title of District Court and Cause.]

ANSWER TO RETURN
(Traverse)

Comes now said Sebastian Gabot, petitioner herein, and controverts the return made by said Albert Del Guercio, District Director, Immigration and Naturalization Service, Department of Justice, Los Angeles, California, District No. 16, to the Writ of Habeas Corpus herein, in these particulars, to-wit:

That it was improper for said District Director to merely return that he held petitioner in compliance with a warrant of deportation issued on November 8th, 1935 under the authority then vested in the Secretary of Labor, since said return should have shown what the Department of Labor, through its various boards and officers, had done, and this is only possible when a full record is returned. 1010

Kwock Jan Fat v. White, 253 U. S. 454, 40 S. Ct. 566, 64 L. Ed.

U. S. vs. Commissioner of Immigration (C. C. A. N. Y.), 3 F. 2d 551.

As to the sufficiency of the return see

In re Ah Toy (C. C. N. D. Cal. 1891), 45 Fed. 795

Marslin v. Schmucker, (C. C. A. 4th), 89 F. 2d 765 (1937)

Jung Woon Kay v. Carr (C. C. A. 9th, 1937), 88 F. 2d 297

Munsey v. Clough (1905), 196 U. S. 364, 25 S. Ct. 282, 49 L. Ed. 515

Christy, Comm. of Imm., et al. v. Leong Don, 5
Fed. 2d 135

Crowley v. Christensen (1890), 137 U. S. 86, 11
St. Ct. 13, 34 L. Ed. 620. [36]

Further controverting said return to the Writ of Habeas Corpus petitioner denies, first, that he is being restrained under proper and legal authority; second that as stated in said Warrant of Deportation that he committed a crime involving moral turpitude within five years of entry, the fact of the matter being that petitioner lawfully entered the United States on September 30th, 1927 as shown on form 505, Certificate of Admission of Alien, a true copy of which is hereto annexed and made a part hereof and marked "Exhibit 1" and not on March 20th, 1934 as alleged in said Warrant; third, that it was not possible to deport petitioner prior to June 12th, 1946 due to conditions resulting from the war, the Court being well aware of the fact that shipping was resumed to the Philippine Islands shortly after V-J Day, a matter of some ten months; fourth, that the hearing allegedly accorded the petitioner on September 12th, 1935, was a hearing in good faith, consistent with the fundamental principles of justice, embraced within due process of law; (See *Tang Tun v. Edsell*, 223 U. S. 673, 32 S. Ct. 359, 56 L. Ed. 606); fifth, that a fair investigation into the facts was made by the Immigration Service to determine petitioners right to remain in the United States, the proceedings being conducted in a spirit of inquisition, in which proceedings the examiner was in the attitude of an inquisitor, rather than a judge; sixth, that the findings were based on adequate evidence; seventh, said petitioner further denies generally each and every statement in the return save that he

is restrained of his liberty by the said Albert Del Guercio, District Director, Immigration and Naturalization Service, Department of Justice, Los Angeles, California, District No. 16; eighth, said petitioner further avers, that he is by the said Albert Del Guercio restrained of his liberty in violation of the Fifth Amendment of the Constitution of the United States, and is by said Albert Del Guercio deprived of his liberty without due process of law.

Chin Yow v. U. S., 208 U. S. 8, 28 S. Ct. 210,
52 L. Ed. 369

Zakonaite v. Wolf, 226 U. S. 272, 33 S. Ct. 31, 57
L. Ed. 218

Bilokumsky v. Tod, 263 U. S. 153, 44 S. Ct. 54,
68 L. Ed. 221.

L. A. GORDON AND HARRY WOLPIN

By Harry Wolpin

Attorneys for the Petitioner [37]

[Verified] [38]

EXHIBIT I

Imm. & Natz. Service San Francisco, California

File No. 12020/25089

Form 505

CERTIFICATE OF ADMISSION OF ALIEN

U. S. Department of Labor

Honolulu File 4800-E

Immigration Service

District Director

Port of Honolulu, T. H.

Immigration & Naturalization Service

San Francisco, California

Date 5-13-35

I Hereby Certify that the following is a correct record and statement of facts relative to the admission to the United States of the alien named below:

- (1) Manifest No. 3-16; Class 3rd
- (2) S. S. President Grant; Line Dollar
- (3) Port at which admitted, Honolulu, T. H.; Date 9-30-27
- (4) Name Sebastian Gabot; Age 18; Sex, Male
- (5) Married, No.; Occupation,; Able to read,
Write,
- (6) Citizen of,.....; Race, % % % % %
- (7) Place of Birth, Apr. 8, 1909 Binalonan Pangasinan
- (8) Class of Immigration
visa,; No.; Issued at; Date,
- (9) Last permanent residence,
- (10) Name and complete address of nearest relative or
friend in country whence alien came,
- (11) Destination,; By whom, Money brought,
..... passage paid
- (12) Whether in U. S. before, When,
Where,
- (13) Whether going to relative or friend, Give name
and complete address;
H. S. P. A. Honolulu, T. H.
.....(No answers given to next five questions
re alien)
- (19) Accompanied by.....; How admitted, Primary
- (20) Remarks: Head tax status not shown.

(Signature) /s/ W. G. STRENCH

District Director

(Official Title)

Honolulu District

U. S. Government Printing Office 1933 14-2302

[Endorsed]: Filed Jun. 17, 1946. [39]

[Minutes: Friday, June 21, 1946]

Present: The Honorable Peirson M. Hall, District Judge.

This matter coming on for hearing on return of Writ of Habeas Corpus pursuant to order for the issuance thereof filed June 11, 1946; L. A. Gordon and Harry Wolpin, Esqs., appearing as counsel for the petitioner; Robert E. Wright, Assistant U. S. Attorney, appearing as counsel for the Government; Bruce Barber, Esq., Immigration Dep't, being present; and the petitioner being present:

Attorney Wolpin makes a statement that the petitioner is exempt from deportation pursuant to the Tydings McDuffy Act exempting Filipinos from deportation for the violation of law, either criminal or civil.

Attorney Gordon makes a statement in support of petition. Attorney Barber makes a statement in opposition to petitioner's claim. Attorney Wright makes a statement.

Sebastian Gabot, petitioner, is called, sworn, and testifies in his own behalf. The Court, after due consideration of the evidence, oral and documentary, and the points and authorities in support, and the law applicable, orders the petition granted and the defendant discharged from custody; counsel for the petitioner to prepare formal order of release.

On motion of Attorney Barber, who requests that the defendant be held in custody pending the decision of the Attorney General on the question of appeal, it is ordered on stipulation of counsel that the defendant may be released on \$1,000 bond pending signing of formal order in accordance with the Court's ruling. [40]

[Minutes: Tuesday, July 2, 1946]

Present: The Honorable Peirson M. Hall, District Judge.

This cause coming before the Court *ex parte*; L. A. Gordon, Esq., appearing for the petitioner, and Robert Wright, Esq., Asst. U. S. Atty., appearing for the Government, and in behalf of the Immigration and Naturalization Service, interposing no objections to the Findings of Fact & Conclusions of Law now before the Court, and having approved same, the Court signs the Findings of Fact and Conclusions of Law and Order discharging petitioner from custody of the Immigration and Naturalization Service of the United States and that bond of \$1000.00 cash on deposit herein be exonerated. The Court further orders said Findings filed and Order filed and entered in the Civil Order Book. [41]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly to be heard on the 17th day of June, 1946 and thereafter was continued by the Court to the 21st day of June, 1946, L. A. Gordon and Harry Wolpin, appearing for the petitioner and Ronald Walker and Bruce Barber, appearing for the respondent; and evidence both oral and documentary having been introduced and the cause submitted for decision, the Court now makes its findings of fact as follows:

Findings of Fact

I.

That it is true that the petitioner was born in Vinalamon, Philippine Islands on April 8th, 1909 and was admitted for permanent residence to the United States at Honolulu, Territory of Hawaii on September 30th, 1927 and to the territorial United States at San Francisco, California on July 29th, 1929 and has resided in the United States continuously since then.

II.

That it is true that petitioner went to Tia Juana, Mexico on the 20th day of March, 1934, returning to the United States through San Ysidro four hours later. [42]

III.

That it is true that on or about October 11th, 1934 petitioner was arrested for the commission of a crime involving moral turpitude, to-wit, Second Degree murder of which he was duly convicted before the Superior Court at San Luis Obispo, California, and sentenced to imprisonment for a term of one year and more.

IV.

That it is true that while serving a term of imprisonment for said crime at San Quentin Prison and on or about the 23rd day of April, 1935, petitioner was interviewed by an official of the Immigration and Naturalization Service, who informed him that if petitioner would not oppose steps taken by the government to effect his deportation, that he would be deported within one year. [Hall]

V.

That it is true that on September 12th, 1935, at San Quentin Prison, one M. Bertrand Couch, a U. S. Immigrant Inspector granted petitioner a hearing during which petitioner was advised concerning his right to be represented by counsel of his own selection, and that petitioner refused to be so represented.

VI.

That it is true that petitioner was not released from imprisonment until he had completed the full period set by the Board of Prison Terms and Paroles.

VII.

That it is true that petitioner was not released from prison until May 22nd, 1942. That it is likewise true that petitioner surrendered into the custody of Albert Del Guercio, District Director of Immigration and Naturalization Service, Department of Justice, Los Angeles, California by virtue of an outstanding warrant of Deportation issued on November 8th, 1935 by the Secretary of Labor.

VIII.

That it is true that petitioner was not being held by virtue of any complaint, indictment, presentment, warrant, rule, regulation or order, except as set out in Paragraph VII of the Findings of Fact hereinabove set forth.

[43]

Conclusions of Law

And as conclusions of law from the foregoing facts, the Court finds:

I.

That the petitioner was born a National of the United States. That the various hearings before the Immigration and Naturalization Service did not deprive petitioner of due process of law.

II.

That on May 1st, 1934, petitioner was a Citizen of the Philippine Islands.

III.

That by virtue of the provisions of Section 172.9 of the Rules and Regulations of the Immigration and Naturalization Service (C. F. R. 903) which provides that any Citizen of the Philippine Islands which (who) was residing in the United States on May 1st, 1934 shall not be deported for any act which occurred prior to May 1st, 1934, petitioner was not subject to deportation.

IV.

That said petitioner is entitled to be discharged from the custody of the Immigration and Naturalization Service. Judgment is hereby ordered to be entered accordingly.

Dated: July 2nd, 1946.

PEIRSON M. HALL

Judge of the U. S. District Court

[Endorsed]: Filed Jul. 2, 1946. [44]

In the District Court of the United States in and for the
Southern District of California
Central Division

No. 5458 P-H

In the Matter of the Application of
SEBASTIAN GABOT
for a Writ of Habeas Corpus

ORDER

To Albert Del Guercio, District Director, Immigration
and Naturalization Service, Department of Justice,
Los Angeles, California, District 16:

It appearing on the return of the Writ of Habeas Corpus allowed by this Court on the 17th day of June, 1946 and thereafter continued by this Court to the 21st day of June, 1946 that Sebastian Gabot is illegally detained by you in that said Sebastian Gabot was born a National of the United States and that on May 1, 1934 he was a Citizen of the Philippine Islands, and by virtue of the provisions of Section 172.9 of the Rules and Regulation of the Naturalization and Immigration Service he could not be deported for any act which occurred prior to May 1, 1934, and that said Sebastian Gabot was not subject to deportation.

It Is Therefore Ordered that pursuant to the Findings of Fact and Conclusions of Law heretofore made herein and by reason of the facts and the law pertaining hereto said Sebastian Gabot [45] shall be forthwith discharged

from the custody of the Immigration and Naturalization Service of the United States.

It Is So Ordered.

Dated this 2nd day of July, 1946.

PEIRSON M. HALL

Judge of the U. S. District Court

Judgment entered Jul. 2, 1946. Docketed Jul. 2, 1946.
C. O. Book 39, page 89. Edmund L. Smith, Clerk; by
J. M. Horn, Deputy.

[Endorsed]: Filed Jul. 2, 1946. [46]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Albert Del Guercio, District Director, Immigration and Naturalization Service, Department of Justice, District No. 16, respondent herein, hereby appeals to the Circuit Court of Appeals for the 9th Circuit from the final judgment entered in this action on July 2, 1946.

Dated: July 2, 1946.

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant United States Attorney

ROBERT E. WRIGHT

Assistant United States Attorney

Attorneys for Respondent

[Endorsed]: Filed & mld. copy to L. A. Gordon & Harry Wolpin, attys. for petnr. Jul 3, 1946. [47]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE RECORD
AND DOCKET APPEAL

Upon motion of respondent (appellant), good cause appearing therefor,

It Is Ordered that the time within which the record on appeal of this cause may be filed with the Circuit Court of Appeals for the 9th Circuit, and the cause there docketed, be extended to and including October 1, 1946.

Dated: This 26th day of July, 1946.

PEIRSON M. HALL

Judge, United States District Court

[Endorsed]: Filed Jul. 26, 1946. [48]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 49 inclusive contain full, true and correct copies of Petition for Writ of Habeas Corpus; Order for Writ of Habeas Corpus; Writ of Habeas Corpus; Return to Writ of Habeas Corpus; Answer to Return (Traverse); Minute Orders Entered June 21, 1946 and July 2, 1946; Findings of Fact and Conclusions of Law; Order; Notice of Appeal; Order Extending Time to File Record and Docket Appeal and Stipulation Designating Record on Appeal which, together with copy of Reporter's Transcript of Hearing on June 21, 1946, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 23 day of September, A. D. 1946.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy Clerk

[Title of District Court and Cause.]

Honorable Peirson M. Hall, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, June 21, 1946

Appearances:

For the Petitioner: L. A. Gordon, Esq., 1026 Black Building, Los Angeles 13, California; and Harry Wolpin, Esq., 1026 Black Building, Los Angeles 13, California.

For the Respondent: Charles H. Carr, United States Attorney, Los Angeles 12, California; by Robert E. Wright, Esq., Assistant United States Attorney; and Bruce G. Barber, District Adjudications Officer United States Immigration and Naturalization Service.

Los Angeles, California; June 21, 1946; 10:00 o'clock A. M.

The Court: Ex parte matters?

The Clerk: Yes, your Honor.

(Other court matters.)

The Clerk: No. 5458, Civil; in the matter of Sebastian Gabot.

Mr. Wolpin: That is ready, your Honor.

Mr. Wright: Ready.

The Court: I examined the briefs and memoranda filed by the parties and I think it is clear, as a matter of law, that date of reentry concerning which there is no question of fact was March 20, 1934.

Mr. Wolpin: We concede that, but we should like to call your Honor's attention to the fact that the Tydings-McDuffy Act that went into effect on May 1, 1934, subsequent to this reentry, provided that hereafter the Filipinos

shall be aliens as far as immigration is concerned. Prior to that time, your Honor, they were regarded as nationals for the purpose of going and coming from the United States. I submit, your Honor, that when the petitioner entered the United States from Tia Juana on March 24, 1934, that that was not the reentry of an alien as far as the law was concerned.

I think counsel will agree to that.

Mr. Wright: No. [2*]

The Court: Let me see. Your point then is that this defendant is completely exempt.

Mr. Wolpin: That is correct.

The Court: From deportation for any cause?

Mr. Wolpin: That is correct, your Honor.

The Court: Your point further is that the Tydings-McDuffy Act, which was passed subsequent to March 20, 1934, applied only to Filipinos who entered the United States after that date?

Mr. Wolpin: That is what the law says, your Honor. The law says that as far as Filipinos are concerned they shall be regarded as aliens on and after May 1, 1934, in their entry to the United States. So there was no entry of an alien, your Honor, as provided by that act when he returned to the United States on March 24, 1934.

The Court: March 20th.

Mr. Wolpin: March 20, 1934.

The Court: Do you have the text of that act?

Mr. Wolpin: I believe counsel has it.

Mr. Wright: 48 U. S. C., 1238.

The Court: Where does it say there that citizens of the Philippine Islands are citizens of the United States?

Mr. Wolpin: That is not my contention, your Honor.

*Page number appearing at top of page of original Reporter's Transcript.

The Court: That they were United States nationals before this date? [3]

Mr. Wolpin: That is correct, your Honor.

The Court: Where do I find that?

Mr. Wolpin: The fact that citizens of the Philippine Islands are born subsequent to 1899 are United States nationals? Counsel will concede that.

The Court: Will you?

Mr. Barber: No, your Honor. They never were citizens.

Mr. Wolpin: I say they were United States nationals. That is the question his Honor is asking.

Mr. Barber: Oh, yes. We concede that. No question about that.

The Court: But this act doesn't use the phrase or distinction "United States national." I was under the impression that when they rewrote the nationality act in 1940 that they omitted the use of the word "citizens" and referred to everybody as "nationals," but they didn't change the immigration laws.

Mr. Barber: Your Honor, I think you will find that in Section 901 of the nationality act, in which they define nationals and nationals do not include aliens. The term "alien" is expressly excluded from the term "national." And if you will look at Title 8, Section 801 I believe is the section, that gives the definition of a national.

The Court: Does that apply to the immigration laws as well as the nationality laws? [4]

Mr. Barber: Yes, your Honor.

The Court: Let me read this aloud, counsel, so I can perhaps follow you better.

"For the purposes of Chapter 6 of Title 8"—that is the Immigration Act of 1917 and 1924—"this sec-

tion and all other laws of the United States relating to immigration, exclusion or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States, shall be considered as if they were aliens.”

That is to say, that from and after May 1st, the effective date of this act, they were then to be considered as aliens.

Mr. Barber: That is my contention, your Honor.

The Court: So the question is whether or not this petitioner here was a citizen of the United States.

Mr. Barber: The question is, your Honor—if I may state it—whether or not he was an alien under the immigration laws who entered the United States in 1934 on March 20th.

The Court: That is the ultimate question, but we are reducing it down now to—

Mr. Barber: We don't claim he is a citizen of the United States now or ever has been, your Honor.

The Court: Well, it says they were to be considered as [5] is they were aliens.

Mr. Barber: He has always been a national, and for immigration purposes nationals have always been in the category of citizens as far as entry and reentry is concerned, once they reach the United States. And when he went to Tia Juana for four hours and came back to the United States I claim, your Honor, that that was not the entry of an alien under the immigration laws.

Mr. Gordon: Your Honor, I think I can clarify it. I am Mr. Gordon and I am co-counsel with Mr. Wolpin.

The Court: I think Mr. Wolpin is doing pretty well.

Mr. Gordon: Yes, your Honor, but I want to say I am familiar with that and I think Mr. Barber knows it,

that at the time the Tydings-McDuffy Act was passed I was in Washington, and I will say this, that at that time, your Honor, the question as to whether the Filipinos who are in this country, and coming to this country, whether they should retain the privilege of coming in here freely as nationals or not was discussed in the Tydings-McDuffy Act, and subsequently they agreed that after May 1, 1934, the Filipinos who entered the United States would be considered then for the purposes of the immigration only as aliens. That was in Title 8, Subsection 3 of the Tydings-McDuffy Act.

Now previous to that, your Honor—and I believe Mr. Barber will agree with me—they came here with impunity, [5] freely. They came back and forth. In fact, many of them were recruited by different labor organizations here to work all over the Pacific Coast and in Hawaii. The Hawaiian sugar planters brought them in in droves.

Now our contention is that Sebastian Gabot went into Tia Juana for four hours to get married. This was previous to May 1, 1934. When he went to Tia Juana he was still a national, he was still clothed with the rights, we may say, of almost a citizen of the United States.

The Court: If that is the case, if that is your contention, then you do not concede, as I understand the concession to be, that the date of his entry was March 20, 1934. You concede, as a matter of fact, that he did go across the border and did come back, but you also assert that he had the right to do that.

Mr. Wolpin: That is correct, your Honor.

The Court: As a United States national.

Mr. Wolpin: That is correct.

If your Honor will read my answer to their supplemental points and authorities, I say counsel concedes the

law to be as stated by the respondent in his supplemental points and authorities. Concerning the subsequent entry of an alien to the United States, we must remember though that the petitioner is a United States national. He has always been a United States national. [6]

In other words, I tried to bring out the fact that all these cases referred to by counsel, they weren't referring to nationals of the United States, they were referring to aliens.

As far as aliens are concerned, your Honor, counsel's contention is exactly correct. But on March 20, 1934, our petitioner was a national of the United States for all purposes, for purposes of entry and reentry, and he cannot come within the category that counsel for the respondent claims these cases apply to.

The Court: I see your point, which was not clear to me in reading your memorandum. The only effect then of the Tydings-McDuffy Act was, after May 1, 1934, to change the status of Filipinos who thereafter entered, or Filipinos who were in the United States and not citizens of the United States.

Mr. Wolpin: There is one more thing I would like to call to your Honor's attention, if I may. In my supplemental brief of points and authorities that was served on counsel before 10:00 o'clock yesterday and filed this morning, I called the attention of the Court to the immigration rules and regulations of the United States which have the same force and effect as law.

The Court: Yes, I have that. I do not see how it is applicable here though.

Mr. Wolpin: It says: "A citizen of the Philippine [7] Islands who has resided in the United States continuously since April 30, 1934 shall not be subject to

deportation for any act of his that occurred or mental or physical diseases, disability, or defect that existed prior to May 1, 1934."

The Court: Your point is not that that applies to the murder which was not committed after May 1st—

Mr. Wolpin: No, that is not my point.

The Court: Your point is that that act is his entry.

Mr. Wolpin: We waive all defects as to entry and reentry. In other words, if they were here on April 30, 1934, if they were residing here, their residence was legal for all purposes and we cannot go back of that date and say that someone entered illegally or in March of 1934.

The Court: Very well. I see your point. Let me hear from the Government.

Mr. Barber: I would like to call the Court's attention to the language of the Supreme Court in *U. S. ex rel. Claussen v. Day*, 279 U. S. 398.

The Court: Is that in your memorandum?

Mr. Barber: Yes.

"It is immaterial whether he was entitled to admission or whether he lawfully entered."

That is speaking of these deportations based upon a crime committed after entry. The statute under which deportation is sought in this case, is that a crime was committed [8] after entry. Now these Filipinos were not citizens, they were aliens.

The Court: They were nationals.

Mr. Barber: They were nationals.

The Court: Is counsel correct in his statement that as a United States national they had the right of entry and reentry the same as a citizen?

Mr. Barber: The immigration laws were not made applicable to them.

The Court: At that time?

Mr. Barber: That is right.

The Court: So that his entry on March 20, 1934, was a lawful entry?

Mr. Barber: Yes. That makes no difference whether it was lawful or unlawful; he entered as an alien at that time.

The Court: Wait a minute. It makes no difference whether it was lawful or unlawful if he entered as an alien?

Mr. Barber: He couldn't have entered as a citizen because he was not a citizen.

The Court: He couldn't have entered as an alien if he was a national.

Mr. Barber: Let me read the term national.

The Court: All right.

Mr. Barber: That is in Section 501 of Title 8, your Honor. [9]

"The term 'national' means a person owing permanent allegiance to a state. The term 'national of the United States' means a citizen of the United States or a person who, though not a citizen of the United States, holds permanent allegiance to the United States. It does not include an alien."

I think the contention of counsel here is that Congress doesn't have the authority to make an immigration act retroactive. That is actually what he is saying.

The Court: No, I don't think he is. He is saying that Congress did not make it retroactive. He is saying that by the Miller-Tydings Act and by the regulation here that they did not make it retroactive.

Mr. Barber: Then the ground for deportation is those things that occurred after the passage of the act. That

murder occurred on October 11, 1934, and the conviction occurred after that date, which was after the act. That is the basis for the deportation and not his entry. His entry may have been lawful. Conceding that he was an alien, the laws applied to him. The basis for the deportation is that he violated his liberty after he came here and that is why he is being deported, not because of his entry.

The Court: Then a person can be a national of the United States and be an alien also?

Mr. Barber: I think that is correct. [10]

The Court: Give me some illustrations. I do not readily follow you.

Mr. Barber: The Filipinos is one illustration. I think there are others.

Mr. Gordon: Following the Government's contention there, your Honor, that one can both be an alien and a national, that is contrary to Section 501 of Title 8. It says "The term 'national of the United States' means a citizen of the United States or a person who, though not a citizen of the United States, owes allegiance to the United States. It does not include an alien."

That is clear. If it does not include an alien then Gabot is not an alien. And up to July 4th of this year, when the Philippines becomes free and an independent nation, your Honor, he is still clothed with the rights of a national. He is not an alien. The Tydings-McDuffy Act has the effect of complete severance or relationship between the United States and the Philippines on July 4th of this year. It will not be long now. But up to that time all the Filipinos are nationals.

Mr. Barber: I think this should be viewed from the standpoint of the law. The law doesn't say he must be

an alien at the time of entry, he must be an alien at the commission of the crime, and I think clearly we can show that.

Mr. Gordon: Our contention is up to now that he is not [11] an alien. He says he must be an alien at the time of the commission of the crime. It is our contention that up to now, up to July 4th, Gabot is a national of the United States and never has been an alien.

It was under that same reasoning that the alien landlord law of the State of California was not held to be applicable to the Filipinos of California on the ground that they were not aliens.

The Court: This act says: "For the purpose of the immigration act, this section and all other laws of the United States relating to immigration * * * citizens of the Philippine Islands, who are not citizens of the United States, shall be considered as if they were aliens." That means no matter where they are. Doesn't that change your status from nationals to aliens?

Mr. Gordon: Apparently not.

Mr. Wolpin: The law says this man became a national, your Honor, at birth, entered the United States as a national of the United States, at Honolulu in 1927 as a national, came to the mainland in '29 as a national, has lived here ever since, entered the United States prior to May 1, 1934, as a national. In the statement that he gave he said the immigration officers just waved to me and I waved back and went in. That clearly shows that they regarded him as a national, and he has always been a national and never has been an alien. [12]

The Court: Didn't this act make him an alien?

Mr. Wolpin: No, your Honor. He is not an alien.

The Court: Why didn't this make him an alien, because it says "all Filipinos who are not citizens shall be aliens"?

Mr. Wolpin: For the purpose of immigration only.

The Court: For the purposes of the immigration act.

Mr. Wolpin: That is right, your Honor.

The Court: And the immigration act includes the purposes of the expulsion act, doesn't it?

Mr. Gordon: That is true. We concede that. But the question is this, your Honor: When does he step from being a national into becoming an alien? When does the transition take place?

The Court: On and after May 1, 1934.

Mr. Gordon: For the purposes of immigration. But he was in this country legally as a national. A crime was committed later on, we will say, but he was still a national. If he were a citizen, if he were clothed with the rights of a citizen—say he was born a citizen—clearly they can't deport him. But he is a national. He was born in the Philippines.

Now the Government's contention is that they deport him for an act that was committed later on. First they started it on the ground that he had entered into the United States and that that entry was not legal because he was an alien. Now they concede that he is no longer an alien, he is a na- [13] tional. Now if his entry there was legal—

The Court: No, the Government doesn't concede he is a national. He maintains he was an alien from and after May 1, 1934.

Mr. Barber: That is correct, your Honor. I don't think there is any question about that.

Mr. Gordon: Now the Toyota case and the de la Ysla case, your Honor, will settle that, that they are nationals for all intents and purposes. In the de la Ysla case the Supreme Court held that he was a national of the United States.

Mr. Barber: Do I understand counsel's argument to be that Congress doesn't have the power to make Filipinos aliens for immigration purposes?

The Court: I don't think he means that. He means that the Immigration Act of 1917 and the Immigration Act of 1924 can only apply to persons who thereafter entered.

Mr. Gordon: That is right.

The Court: If I understand your position.

Mr. Gordon: That is correct.

The Court: In other words, that this definition here in the Miller-McDuffy Act says "For the purposes of the Immigration Act of 1917 and of 1924 this section and all other laws relating to immigration * * *."

Mr. Gordon: That is true. Suppose they came in later.

The Court: It looks to me that the exclusion provisions [14] and expulsion provisions of those laws made them from and after that date an alien and took away their cloak as a United States national.

Mr. Wolpin: Let us assume, your Honor, that the petitioner prevailed in establishing his defense of self-defense in the murder trial and was not convicted. Would counsel say that he was an alien? Was it the conviction of the crime that made him an alien?

The Court: No, I think counsel maintains he was an alien anyhow. Isn't that right?

Mr. Barber: That is right.

The Court: But he was not subject to deportation until he committed the crime.

Mr. Barber: I am trying to find, your Honor, where in the regulations it is provided that Filipinos who enter prior to May 1, 1934, are to be regarded as having entered lawfully under the immigration laws, giving to the act a retroactive effect.

Mr. Wolpin: There is something else that may help the Court, your Honor. The Government claims that they have the right to deport an alien who committed a crime involving moral turpitude within five years after entry. It is our contention, your Honor, that the entry in this case was in 1927, as shown by our exhibit attached to our answer to their traverse, and there was no entry from the standpoint of immigra- [15] tion purposes within five years of the commission of the crime.

Mr. Barber: Your Honor, these aliens were regarded as having lawfully entered as aliens. I haven't been able to put my finger on the regulation yet, but I think that is well familiar to Mr. Wolpin, who was formerly in our service, that they were regarded as having lawfully entered in the United States under the immigration laws where they came to the United States prior to the passage of the act of May 1, 1934.

Mr. Wolpin: As aliens, Mr. Barber.

Mr. Barber: The law must have related to them as aliens. They could apply for a reentry permit on the basis of that entry if they showed residence in the United States prior to May 1, 1934.

Mr. Wolpin: That is true, but the Tydings-McDuffy Act, our contention is, was not retroactive in order to make the petitioner an alien at the time of his entry on

March 20, 1934. He entered without inspection, counsel will concede.

The Court: Your contention is that all these cases cited by the Government were aliens?

Mr. Wolpin: That is correct.

The Court: You concede that he was not an alien before May 1, 1934, the effective date of the Tydings-McDuffy Act, but that he was a United States national?

Mr. Barber: He was a national. I have never been able to see the difference. As a national he is not a citizen, [16] and never has been. There is a distinction, and it is very difficult to draw, between a national and a citizen.

The Court: If he is not a citizen he is an alien?

Mr. Barber: I think he is an alien if he is not a citizen.

The Court: You mean he was.

Mr. Barber: Yes.

The Court: At all times he was.

Mr. Barber: Yes. As a class of alien they might have provided any type of alien might enter without inspection, like Canadians can go across the border without inspection.

The Court: But they are not nationals.

Mr. Barber: No, they are not nationals.

The Court: Rule 31 of the Immigration Rules and Regulations, Subdivision (d)—I do not find any Rule 31 in this book that some of you gentlemen sent up to me.

Mr. Barber: That is the rules and regulations of January 1, 1930, and they are not in Title 8 of the Federal regulations.

The Court: This book is entitled "Immigration and naturalization Laws and Regulations as of March 1, 1944." What rule was it?

Mr. Barber: The one cited by Mr. Wolpin is Rule 31 of the Immigration Rules and Regulations, Subdivision (d), and these appear to begin with Rule 105. [17]

Mr. Wolpin: I have the text here if your Honor wishes to see it.

The Court: I cannot find it in this book. Maybe you can find it.

Mr. Barber: I have that rule, I think.

The Court: I want to find it in my book so that when I want to look for it again I can find it.

Mr. Barber: It is Title 8, Code of Federal Regulations.

The Court: Where is it in that book?

Mr. Barber: The section he is referring to, I believe, is Section 172.9, which I can read here.

The Court: Just a minute. If that is another section, I can find it. 172.9?

Mr. Barber: Yes, your Honor.

Mr. Wright: Page 903 of your book, your Honor.

The Court: I find it now but I could not find it under this reference number.

Mr. Barber: I would like to call the attention of the Court to the wording of this provision that Mr. Wolpin refers to.

You will note in there that it doesn't refer to the criminal classes, it merely says: "A citizen of the Philippine Islands who has resided in the United States continuously since April 30, 1934 shall not be subject to deportation for any act of his that occurred or mental or physical dis- [18] eases, disability or defect that existed prior to May 1, 1934." It doesn't refer to the criminal classes which are made deportable.

The Court: If he committed a crime that would have been an act of his, but that does not make any difference

with relation to that because the crime was committed subsequent to May 1, 1934. His point with relation to this is that while it was his act of May 1, 1934, it is the concurrence of that act, together with his reentry on May 20, 1934, the two acts together make him deportable.

Now there isn't any doubt but what his reentry in Tia Juana was an act, is there? It was an act of his. It was something he did.

Mr. Barber: It was an act but he wasn't in the United States, he was coming into the United States.

Mr. Wright: It is more than an act, your Honor.

The Court: It was an act of his that occurred, and his reentry occurred before May 1, 1934, and conceding that it was either legal or illegal it does not make any difference under this provision whether it was legal or illegal if it was an act that subjected him to deportation. He couldn't be subjected to deportation for the act which occurred subsequent to May 1, 1934, unless it is taken in conjunction with the act which occurred on March 20, 1934.

Mr. Barber: I think, your Honor, that this act clearly [19] is retroactive, otherwise I don't see how, after they were made aliens by that act, you could regard their entry occurring prior to May 1, 1934, as having been a lawful entry as an alien for naturalization purposes and for immigration purposes.

The Court: I do not think it makes any difference if their construction of this is correct whether his entry was lawful or unlawful, or whether he was a national or not a national, or a citizen. He was a citizen of the Philippine Islands. There isn't any doubt about that, is there?

Mr. Gordon: No.

I think Mr. Barber is trying to make much of an issue as to whether or not the act is retroactive. Now Rule 31, Subdivision (d), states—

The Court: That is Rule 172.9.

Mr. Gordon: It says right in there, your Honor.

“All citizens of the Philippine Islands shall be subject to deportation and may be deported in the same manner as aliens, with the following exceptions:

“(1) A citizen of the Philippine Islands who has resided in the United States continuously since April 31, 1934 shall not be subject to deportation for any act of his that occurred or mental or physical diseases, disability or defect that existed, prior to May 1, 1934.” [20]

In effect they give effect to it that it is not retroactive.

Mr. Barber: Your Honor, this refers to residents in the United States, it looks to me like, and this act was one that was outside of the United States. He went out of the United States to come back in.

The Court: He came back in.

Mr. Barber: Yes, he did.

Mr. Gordon: He was here on April 30th though.

The Court: I have the de la Ysla case here. Let me see what it says.

Mr. Wright: Your Honor, if you are stopping for a moment, I have been reflecting on a remark the Court made as to the effect of this entry prior to April 30, 1934, as being an act which, taken in conjunction with the crime, the criminal act, is the basis for the deportation. I think, your Honor, that the only effect of that act of entry in March of 1934 is to fix a point at which starts the beginning of the statutory period, and it has no other effect than that.

The Court: I do not think there is any doubt about that, but it still is his act which occurred before May 1, 1934.

Mr. Wright: Yes. It is his act, and that is the reason for my remark that the characterization of it as being his act is not a sufficiently comprehensive characterization to place it in the picture that we are considering. Notwithstanding it is his act, it is his act of entry and its only legal effect, so far as this question is concerned, is to fix the period, that is, the beginning of the period within which he is subject to deportation by violating his right to remain here by the commission of this crime.

In other words, the position that I am presenting to your Honor is that we do not have here a situation where two acts must be taken conjunctively to constitute the cause for deportation. The first act, the act of reentry, fixes the beginning of the period within which the act which is the cause for the deportation must occur, and that of course occurred within five years.

Mr. Gordon: I don't think that is a tangible viewpoint. In other words, for the purposes of the Government that they fix a date as to his reentry into his country. All right. It says clearly here that he is not accountable for anything that occurred after that, and yet they want to base his rights to be deported from that date.

The Court: Let me glance at this case. What is the provision of the statutory reference under which you are deporting him?

Mr. Barber: Title 8, Section 155, right at the beginning; Section 155(a).

The Court: He must have been an alien when he reentered, must he not? [22]

Mr. Barber: I don't see that it says that.

The Court: It says:

“At any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this chapter, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; * * * any alien who, after May 1, 1917, is sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, * * *

Mr. Wright: May I suggest another emphasis for that alien business, your Honor? It doesn't say any person who at the time of entry was an alien; it says any time within [23] five years after entry any alien, and since April 30, 1934, this man has been considered as an alien so far as this law is concerned.

The Court: This *de la Ysla* case is pretty definite in its statement that the citizens of the Philippine Islands are not aliens, and while this related to the application of this man to become a citizen of the United States on the ground that he had—

Mr. Wright: That case is prior to the amendment of May 1st, your Honor.

The Court: No, this is 1935, May 20, 1935, and—

Mr. Barber: You will notice the Supreme Court said the same thing prior to 1934.

The Court: Yes, this is based upon the Toyota case.

Mr. Barber: It doesn't say they are citizens.

The Court: I know, but it doesn't say they are aliens. They must be an alien to be able to be deported.

Mr. Barber: In connection with what Mr. Wright has said here, I think the basis of the deportation must be the commission of the crime. Take, for instance, an alien who had been lawfully admitted, he could not be deported unless he committed the crime. If he commits the crime involving moral turpitude within five years he may be deported. The deportation is really based upon the commission of the crime which violates the liberty he has here by the illegal entry. [24]

Mr. Wright: At the time this man committed this crime he was an alien, so at any time within five years after entry any alien who at the time of entry, etc. It refers to this particular man because when he committed the crime he was to be considered as an alien pursuant to the provisions of the statute as it existed after April 30, 1934.

Mr. Gordon: But the *de la Ysla* case came later after the commission of this crime, and they held that he was a national.

Mr. Wright: He was a national, yes, but for the purpose of the deportation law he is to be considered as an alien.

Mr. Gordon: For the purpose of the immigration law, counsel. That is an immigration question.

The Court: On these questions, do you have any evidence to offer in this case? These are questions of law.

Mr. Wolpin: They are all questions of law, your Honor.

The Court: You have no evidence?

Mr. Wolpin: Not on the question of the law; no.

The Court: On any question, do you have any evidence to offer at all?

Mr. Wolpin: If your Honor rules with us I do not think it is necessary to offer any evidence. If your Honor rules against us, if your Honor rules he was an alien when he entered, which I don't see how by any stretch of the imagination it could be determined that way, then we might have some evi- [25] dence from the petitioner.

The Court: I think you had better put your evidence on because I want to give a little consideration to these cases here.

Mr. Wright: We don't present the question that he was an alien when he entered and we don't want to have anything to do with that question. We will just say that he is to be considered as an alien when he committed this crime as far as the law is concerned.

Mr. Wolpin: Does your Honor wish to hear the question of whether he had a fair hearing?

The Court: Whatever evidence you have to offer, I will hear.

Mr. Wolpin: Will you take the stand, Mr. Gabot?

SEBASTIAN GABOT,

called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Sebastian Gabot.

The Clerk: Your address?

The Witness: 704 West Main Street, Santa Maria, California.

The Clerk: Take the stand. [26]

Direct Examination

By Mr. Wolpin:

Q. Mr. Gabot, where and when were you born?

A. In Binalonan, Philippine Islands.

Q. When were you born, Mr. Gabot?

A. What date?

Q. What date.

The Court: Pardon me, counsel. None of these things are denied.

Mr. Wolpin: No, they are not denied. As far as that is concerned, the entire matter, by failing to deny the allegations in their answer they have admitted them.

The Court: Of course you had some conclusions in your application here. That he consented to deportation under duress is, in effect, your conclusion. That he would be deported from the United States anyway, and if he would sign a consent, that the inspector would get him out of prison and send him to the Philippine Islands within a year. Those are the only things that are denied.

Mr. Wolpin: I do not believe that they are even denied, your Honor, in the return to the writ.

(Testimony of Sebastian Gabot)

Mr. Barber: Your Honor, the reason they are not denied is under the authority of the Ninth Circuit in 88 Fed. (2d) 297, at page 298, it states:

"In a habeas corpus case the issues are framed [27] upon a return and denial without reference to the petition or the writ."

Then in the case of *United States v. Jewell*, Second Circuit, 266 Fed. 651, the Court states:

"The allegations of the traverse were put in issue without reply by the return."

The Court: I think that is the rule. So that is the only thing that is in issue here, is the question of whether or not he had a fair hearing, isn't that right?

Mr. Wright: Yes, your Honor.

The Court: The matter of the date of entry, reentry, commission of the crime, incarceration in the penitentiary, conviction, release date, those are all admitted.

Mr. Wright: A copy of the report of the hearing is attached to the return in this case as well.

Mr. Wolpin: Very well.

Q. Will you tell the Court, Mr. Gabot, what happened when you were in San Quentin Prison as far as the immigration service is concerned?

A. Well, I can't recall it but they asked you over there because when they come and ask you you are always—they always say "Sign this," "Sign this" and "Sign this," and you can't refuse anything. You have to sign it, or you have to give your statement, regardless if you like it or not.

(Testimony of Sebastian Gabot)

Q. Tell the Court what happened before you gave this [28] statement on April 23, 1935. Do you remember meeting M. Bertrand Couch, an immigration official?

A. It has been a long time that I can't remember everything.

Q. Do you remember what they told you before you gave this statement?

A. Well, they say if I will be willing to be deported to the Philippines within a year, I have to give a paper to sign, and after that I will be deported within a year.

Q. Were you deported within a year?

A. No, sir.

Q. How long after they told you you would be deported within a year if you signed this statement were you actually released from prison?

A. Well, they tell me I will be deported within a year and I have been out from San Quentin for four years.

Q. How long were you in San Quentin after April 23, 1935?

A. I have been there about seven and a half years.

Q. Six and a half years after they told you you would be deported within a year after you signed this statement?

A. Yes, sir.

Q. And if they didn't tell you that you would be deported within a year would you have waived your right to counsel? [29]

A. Well, I would have refused then to be deported, if they will not let me out within a year.

Mr. Wolpin: Is there anything the Court wishes to ask?

The Court: Maybe counsel wants to cross-examine him.

(Testimony of Sebastian Gabot)

Mr. Wright: No cross-examination.

Mr. Wolpin: That is all, your Honor.

The Court: I would like to ask you some questions.

You said you signed some document. What document? You didn't develop that. I don't know what you are talking about.

By Mr. Wolpin:

Q. Did you sign a consent to deportation, Mr. Gabot, in April of 1935?

A. I did sign it to provide that I will be deported within a year.

Q. With the understanding that you would be deported within a year? A. Yes, sir.

Q. And after that they conducted this hearing in which they asked you some questions about where you were born, and so forth, and you told them everything?

A. Yes, sir.

Q. And you told them that you didn't care to have an attorney present, that that was the understanding, that you would be deported within a year?

A. Yes, sir. [30]

Q. Approximately six months later they came again for another statement, didn't they?

A. Well, I think about that time.

Q. That was in September? A. Yes.

Q. And at that time what did they tell you about your being deported?

A. Well, they tell me the same thing as they told me the first time.

(Testimony of Sebastian Gabot)

Q. Did you say, "I want to be sent back to my home in the Philippine Islands as quickly as they will let me be deported? I am all ready to go. I have nothing to get outside of this prison in the way of property and personal effects," is that what you said? A. Yes.

The Court: Was that true?

The Witness: Yes, sir.

The Court: Was that your state of mind at the time?

The Witness: Yes.

The Court: You were willing to be deported?

The Witness: I was willing then if within a year.

The Court: If they deported you within a year?

The Witness: Yes.

The Court: That was because you were in prison then?

The Witness: Yes. [31]

The Court: For several years?

The Witness: Yes.

By Mr. Wolpin:

Q. You are not willing to be deported now, are you?

A. No.

Mr. Wolpin: That is all, your Honor.

The Court: Cross-examine.

Mr. Wright: No cross-examination, your Honor.

The Court: Was there any statement that you made to the immigration officers on either of these occasions which was not true?

The Witness: No.

The Court: Very well.

(Witness excused.)

Mr. Wolpin: I wish to call your Honor's attention to the end of the statement taken April 23, 1935. First I want to call your Honor's attention to that statement in that nowhere in that statement do they ask him if he wishes to be represented by counsel.

Then I wish to call your Honor's attention to the end of that statement which says, "Criminal history." It says:

"Fingerprint returns show this man has been convicted of only one crime, the one he is now doing time for."

This man, your Honor, is not a man of criminal tendencies. [32] I don't care to go further into the question of his innocence or guilt. That has been determined. It is *res adjudicata* as far as we are concerned. But if your Honor will read that statement—

The Court: I don't think there is any prejudice coming to him by virtue of the statement. There wasn't any question that he answered untruthfully, and even though he had been represented by counsel we don't know what other answers he would or could have given. He was already convicted of the felony and the fact that he admitted it neither gave him any greater nor less right in any connection whatsoever. They asked him about nothing else. It was solely in connection with that. So they did not secure information from him at that time which they are now trying to use against him and which wasn't almost a matter of public record. So I do not think you will be entitled to your writ on the basis of a lack of a fair hearing.

The only question in my mind is a question of law, as to whether or not, as a matter of law, he can or cannot

be deported. I want to read the Toyota case again. I think you have all given me the references that are required here.

Do you have any other statutory or regulatory reference?

Mr. Wolpin: Does your Honor wish to have us file briefs?

The Court: I do not think so. I think there is enough here. It may be that I can examine this a little more right [33] now, if you will just wait a minute. I will read the Toyota case again.

Mr. Wright: Will your Honor be about five minutes? Maybe we can have a short recess.

(Short recess.)

The Court: I think I am ready to make a decision in the matter.

As I indicated, I do not think there is any substance to the petitioner's claim that he was denied a fair hearing, and the question remains as to whether or not, as a matter of law, the deportation provisions of the immigration and exclusion laws apply.

Under the authority of the Toyota case, *Toyota v. U. S.*, 268 U. S. 402, and particularly at page 412, and the Ninth Circuit case of *Roque de la Ysla v. U. S.*, decided by the Ninth Circuit on May 20, 1935, reported in 77 Fed. (2d) at 988, a certiorari denied, 296 U. S. 575, the Court there holds that citizens of the Philippine Islands are not aliens. So that on the date of his reentry into the United States, concerning which there is no dispute, on March 20, 1934, he was not an alien and he was a citizen of the Philippine Islands at that time and still is and has been at all times a citizen of the Philippine Islands.

The exclusion and deportation laws of Title 8, Section 155, and particularly the subdivision under which this depor- [34] tation order is brought, having committed a crime within five years after entry, relates to aliens, so that up until May 1, 1934, the effective date of the Tydings-McDuffy Act, the petitioner here was not an alien.

Whether he was an alien after that time or still is an alien, I do not think is material because under the provisions of the Tydings-McDuffy Act it might appear that he would be classified as an alien because it provides that for the purposes of the immigration and naturalization laws of this section, and all other laws relating to immigration, exclusion and expulsion of alien citizens of the Philippine Islands who are not citizens of the United States, shall be considered as if they were aliens. The department having to do with the enforcement of that statute promulgated a regulation which has the force and effect of law, if it is within the power given, and no point is made that it is not within the power given so it must be considered a law. That regulation provides as follows:

"All citizens of the Philippine Islands shall be subject to deportation and may be deported in the same manner as aliens, with the following exceptions:

"(1) A citizen of the Philippine Islands who has resided in the United States continuously since April 30, 1934, shall not be subject to deportation [35] for any act of his that occurred or mental or physical diseases, disability, or defect that existed, prior to May 1, 1934."

There isn't any question here of any mental or physical diseases, disability or defect. There is no question here

but that the petitioner has resided in the United States continuously since April 30, 1934. So the question to be decided and the question on which the case turns is whether or not any act of his, that is to say, he committed any act prior to May 1, 1934, which makes him subject to deportation.

There isn't any dispute but what the assault with a deadly weapon, or murder—which was it?

Mr. Wolpin: Second degree murder.

The Court: —second degree murder, for which he was convicted and sentenced to serve a term in the California prison, was committed on October 11, 1934, which was after May 1, 1934.

There isn't any doubt but what that was within the five-year period subsequent to his reentry on March 20, 1934; and there isn't any doubt but what it is far beyond the five-year period subsequent to his original and only previous entry into the United States in September 1927. So the question gets narrowed down still further to whether or not his reentry on March 20, 1934, was an act of his which occurred prior to May 1, 1934, which might subject him to deportation. [36]

I do not think that his reentry alone would. But it is very plain also that the commission of the offense involving moral turpitude on October 11, 1934, alone would not have subjected him to deportation, had it not been for his act of voluntarily leaving the United States and returning on March 20, 1934, which he had a right to do, and which he did at a time when he was an alien. I think it was an act within the terms and provisions of this regulation which occurred prior to May 1, 1934.

Therefore it took the concurrence of the two acts of the petitioner here, namely, the commission of the offense after May 1, 1934, which, as I say, could not under any circumstances have subjected him to deportation had it not been for his previous act of voluntarily leaving the United States and returning on March 20, 1934, which was prior to May 1, 1934, and I think therefore that under the regulations as promulgated by the department in their construction of the law, and enforcement of the law, as well as the various acts involved, that the petitioner is entitled to his writ, which will be granted.

The petitioner will be discharged from custody.

Mr. Wolpin: Thank you, your Honor.

Mr. Barber: Would the Court consider withholding judgment to give the Government time to see whether or not the Attorney General will authorize an appeal? Otherwise the [37] alien will go without custody.

Mr. Gordon: Your Honor, he has been held for quite a long time now.

Mr. Barber: There is no bond now.

The Court: Has he been out on bond?

Mr. Wolpin: No, your Honor.

The Court: Is he in custody now?

Mr. Wolpin: Yes. He has been in the county jail sleeping on the floor without a cot or without a cover.

The Court: Do you have any reason to believe that the defendant here will disappear? It is quite evident that he will not go back to the Philippine Islands.

Mr. Barber: No. It is quite a difficult problem to find these persons when they do decide to disappear within the United States.

The Court: I think that the question of law is a novel one. It appears not to have been decided by any of the

courts except this one, and I think that in the interests of the administration of the laws, that the Attorney General certainly should be given an opportunity to determine whether or not he wants to appeal the case.

Mr. Gordon: Suppose we do this: We will make arrangements with Mr. Barber any time he wants our client we will be glad to produce him. Mr. Barber has known me long enough.

Mr. Wolpin: May I suggest that a reasonable bail be [38] fixed, something like \$500?

The Court: I do not know whether I can fix bail because I am granting the writ and discharging the petitioner from custody.

Mr. Barber: If you withhold your order you could give the Government an opportunity to consider bail and release him under bail pending the time the Attorney General will take an appeal.

The Court: The defendant will remain in custody until the signing of a formal order.

Now on this matter, I notice recently that the Circuit Court on a writ of habeas corpus sent it back to the trial court for findings of fact. I hadn't been familiar with their desire to have findings of fact in such matters, so I do not know whether you want to prepare findings of fact or not.

Mr. Wright: I can't get it into my head that it was the intention of Congress, or the Supreme Court, that

these rules should apply to habeas corpus matters in view of the constitutional and statutory provisions relating to habeas corpus generally.

The Court: What rules?

Mr. Wright: The rules of civil procedure with reference to findings of fact and conclusions of law.

The Court: All of us have our own ideas about whether the Circuit Court is right or wrong, but they are the Circuit [39] Court, and it is our duty and obligation to follow them. Had I been deciding many of the things they decide I no doubt would have decided them differently, and so would you. But nevertheless I do not think that it is necessary to have findings of fact and conclusions of law on such a matter.

I have indicated here in the statement which I have attempted to make my appraisal of the facts and my conclusions of law, and it seems to me that that should be sufficient for the Appellate Court to ascertain the grounds upon which I granted the application.

I think the Attorney General is entitled to reasonable time, and the petitioner will remain in custody until the signing of the formal order which the parties will prepare and present.

Mr. Barber: We will do that immediately by telegraph.

The Court: Would you know today, because I will be in Fresno all next week.

Mr. Barber: I don't think it would be necessary to know today. They undoubtedly want to know on what basis the matter is before the court.

The Court: I will withhold signing the order then until July 1st, Monday. That will be one week from Monday.

Mr. Gordon: Will he remain in custody?

The Court: He will remain in custody and I will withhold signing the formal order releasing him until that time, [40] unless in the meantime the parties consent to release him on bond, in which event you can take it to one of the judges here during my absence and they of course can release him on bond.

Mr. Wolpin: We are willing to post a bond of \$500 so he doesn't have to remain incarcerated in view of the circumstances in the county jail where he has been sleeping on the bare floor for the past five days.

Mr. Barber: We can remove him back to Terminal Island. That is where we had him.

Mr. Gordon: On the other hand, he wants to be discharged and we are willing to put up a bond.

The Court: The parties have heard the order and ruling of the Court.

(After a subsequent hearing in chambers, the Court ordered, on stipulation of counsel, that the petitioner may be released on \$1000 bond pending the signing of the formal order in accordance with the Court's ruling.) [41]

CERTIFICATE.

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 12th day of September, A. D., 1946.

AGNAR WAHLBERG,
Official Reporter.

[Endorsed]: Filed Sep. 13, 1946. [42]

[Endorsed]: No. 11433. United States Circuit Court of Appeals for the Ninth Circuit. Albert Del Guercio, District Director Immigration and Naturalization Service, Department of Justice, District No. 16, Appellant, vs. Sebastian Gabot, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed September 24, 1946.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11433

ALBERT DEL GUERCIO, District Director Immigration
and Naturalization Service, Department of Justice,
District No. 16,

Appellant,

vs.

SEBASTIAN GABOT,

Appellee.

STATEMENT OF POINTS ON APPEAL AND
DESIGNATION OF PARTS OF RECORD FOR
CONSIDERATION ON APPEAL

Pursuant to Paragraph 6, of Rule 19 of the Rules of
this Court, Appellant states the points on which he
intends to rely on the appeal, as follows:

1. The District Court erred in its interpretation and construction of the scope, intent, and purpose of the regulation 8 C. F. R. 172.9 (a), more particularly the meaning of the words "any act of his" contained therein.
2. The regulation so interpreted and construed is void as making an exception or limitation not authorized by the Act of Congress which became effective May 1, 1934 (48 Stat. 456, 462, 463; 53 Stat. 1230; 48 U. S. C. 1232, 1238) making the Immigration Acts of 1917 and 1924 applicable to Filipinos; more specifically because the regulation, thus interpreted,

would be inconsistent with the language of Section 19 (a) of the Immigration Act of 1917 (8 U. S. C. 155) here involved.

3. The Court erred in discharging petitioner.

Appellant designates the entire record on appeal as the record necessary for the consideration thereof.

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant U. S. Attorney

ROBERT E. WRIGHT

Attorneys for Appellant

[Affidavit of Service by Mail.]

[Endorsed]: Filed Sep. 24, 1946. Paul P. O'Brien,
Clerk.